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ACTION MEMO FOR UNDER SECRETARY JEFFERY - E**RJ III HAS SEEN**FROM: EEB - Elizabeth Dibble, Acting *ED*

OCT 22 2007

SUBJECT: Review of Scope of Presidential Permits for Cross-Border Pipelines

Recommendation

That you authorize EEB to publish in the Federal Register the attached Notice of Intent seeking public comment regarding the appropriate scope of Presidential permits issued for cross-border pipelines.

Approve *[Signature]*

Disapprove _____

Background

Executive Order 13337 of April 30, 2004 and Executive Order 11423 of August 16, 1968, as amended (see Tabs 1 and 2), authorize the Secretary of State to issue Presidential permits for the construction, connection, operation, or maintenance of certain "facilities" at U.S. borders. Permitted "facilities" include, among other things, pipelines for the exportation or importation of all products (crude oil, water, CO₂, etc.), except natural gas -- which is permitted by the Federal Energy Regulatory Commission (FERC)). The Secretary has delegated this authority to you and to P under Delegation of Authority No. 118-2 of January 26, 2006.

EEB/ESC reviews applications for such facilities, and makes a recommendation as to whether you should issue a permit for the proposed border crossing in the national interest. Currently, we are processing Presidential permit applications regarding three major new crude oil pipelines from Canada. We expect to make a recommendation to you regarding the issuance of a Presidential permit associated with one of those, filed by Keystone, at the end of December 2007.

A key concern regarding our current practice in the review of Presidential permit applications is the scope of the review and permit issued. In recent years, the Department has, as a matter of practice, issued permits covering not just the

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crossing of the U.S. border, but the entire length of the pipeline in the U.S., be it 100 or 1000 miles long. There are significant burdens and delays associated with this practice. For example, in the case of the 1300-mile long Keystone pipeline, our current permitting practice requires that we take steps to prepare an environmental impact statement (EIS) for the entire 1300 miles. Preparation of an EIS for the entire pipeline has added a significant delay in permitting the project, and has required the full-time dedication over a period of 18 months of one environmental lawyer in OES, at least fifty percent of an EEB/ESC officer's time, significant time of two other lawyers in L, and significant travel funds.

The Department is responsible for conducting environmental reviews of the other two major pipelines for which we currently have applications (totaling 700 miles in the U.S.), and we expect at least one other application for a major crude oil line running from Canada to the U.S. Gulf coast within the next year. In addition, several other major crude lines from Canada's oil sands region to the southern U.S. have been proposed for the coming decade.

The bureaus involved in the review of permit applications (EEB, OES, WHA, and L) agree that the relevant executive orders give the Department the discretion to change its procedures to limit the scope of the permit and the related environmental review more clearly to facilities "at the border." We are considering whether to interpret "at the border" to mean the distance from the border to the first shut-off valve of the pipeline. This would, at most, be a distance of 100 miles, but likely less depending on pipeline design and path. For permits for natural gas pipelines within its authority, the FERC limits the scope to this standard, although FERC is separately under a legal obligation to regulate the entire portion of any interstate natural gas lines under its jurisdiction. The Department has no similar authority, by EO or statute, to permit or regulate activities relating to interstate pipelines that do not cross the international border. Pipelines within the U.S. fall under the regulatory prevue of the Department of Transportation.

The attached Notice of Intent (NOI) that we propose publishing in the Federal Register indicates that the Department is contemplating a change in its current practice along the lines of the FERC practice and requests public comment. It also states our intention to convene an interagency working group to seek the comments and views of other USG agencies that deal with environmental and/or pipeline issues. Based on the comments received, and our own internal review, we expect to make a recommendation to you by the end of November on whether any change should be made to our existing practice. We would publish the Department's

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decision in a subsequent notice to the Federal Register. All concerned bureaus recommend that you authorize the publication of this NOI.

Attachments:

Tab 1 – EO 11423

Tab 2 – EO 13337

Tab 3 – Notice of Intent

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Drafted: EEB/ESC/IEC/EPC – Jeff Izzo, 10/03/2007, 7-1291

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